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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 124

THE FIRST NATIONAL BANK OF CHICAGO,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

HAROLD V. AMBERG,
Counsel for Petitioner.

BLAKELY-WARREN PRINTING COMPANY, CHICAGO.

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Comes now the petitioner in the above entitled cause and respectfully petitions the Court for a rehearing in the above entitled cause on the ground that the decision herein is predicated on a constructive Congressional intent based, as petitioner submits further analysis will show, on a misconception of Congressional intent in respect of consolidated returns and a misconception of facts arising out of inexact off-the-record statements made by the Court of Claims and adopted by the Court.

The petitioner respectfully submits:

I.

Within the scope of unequivocal statutory language, the returns of the two Joint Stock Land Banks were included in the consolidated return of the petitioner and such consolidated return has been consistently accepted by the Commissioner of Internal Revenue and is not at issue herein.

As to Congressional intent,—not only is there no exception in respect of Joint Stock Land Banks in the consolidated return provisions, but, to the contrary, there is distinct evidence that Congress affirmatively intended that Joint Stock Land Banks should be treated like other private corporations under the Income Tax Laws. *Congress in* 1917 *deliberately refrained* (*and has since deliberately refrained*) *from conferring on Joint Stock Land Banks the status of tax-exempt corporations* (the simple way to take them out of the operation of the consolidated return provisions of the Income Tax Laws) at times when it conferred such status on their companions,—the Federal Land Banks and Intermediate Credit Banks. (Petitioner's brief, pp. 92-93.) Congress apparently contemplated that Joint Stock Land Banks would have taxable income and the Bureau of Internal Revenue has held that "the net income of Joint Stock Land Banks is subject to Federal Income Tax" (Petitioner's brief, p. 61) *but, with or without taxable income, Joint Stock Land Banks were left, not inadvertently, within the operation of the Income Tax Laws.*

Furthermore, such a consolidated return is within the recently confirmed Congressional intent, expressed (Petitioner's brief, p. 92) as follows:

> "the committee recommends its adoption not primarily because it operates to prevent evasion of taxes or because of its effect upon the revenue, but because the principle of taxing as a business unit what in reality is a business unit is sound and equitable and convenient both to the taxpayer and to the Government."

Had it been at issue, it could easily have been demonstrated or stipulated that the Joint Stock Land Banks were not only, in fact, integral parts of the petitioner's business unit (incidentally so with the acquiescence and/or encouragement of all Federal agencies con-

cerned) but also, in law, within the degree of affiliation prescribed in the statute. The affiliation was not the result of a preconceived design on the part of the parent company to get relief from taxation,—any consequence thereof, income-tax-wise, being merely a fortuitous result of an affiliation originating from impulses completely divorced from Income Tax considerations (Petitioner's brief, p. 91).

II.

The interpretation of the interest deduction provision should not be influenced by the consequences of the result under the consolidated return provision any more than the clear authorization to file such a consolidated return should be questioned because it might result in a benefit to the parent company under the interest deduction provision. The interpretation of each provision should be independent of the interpretation of the other and such independent interpretations should not be colored subsequently by the consequences of putting the two interpretations together. Although neither inference should be indulged, it is submitted that, if the consequences of putting the two interpretations together is to color either or both interpretations, there is more justification (this being tax legislation) for an inference that the defendant must affirmatively show that Congress intended such coloration than for an inference that the petitioner must show the contrary.

All such considerations aside, the interest deduction exception clause should be construed as though the issue were raised on the independent return of a Joint Stock Land Bank; (Court of Claims, R. 19; Petitioner's brief, pp. 85, 86-87),—*otherwise the Court will, tacitly at least, sanction the theory that the intent of Congress in respect*

of an Income Tax provision is contingent on the consequences under the consolidated return provisions.

III.

The factual off-the-record conclusion of the Court of Claims that the deduction of interest on its bonds makes no difference to an independent Joint Stock Land Bank should not be adopted casually and, even if true, should influence the interpretation of the interest deduction provision only to the extent that it can be shown to have influenced the intent of Congress. Furthermore, passing the fact that this Court should take judicial notice that the statement of the Court of Claims that "Joint Stock Land Banks are not permitted to engage in any business except that of making loans to farmers and issuing bonds" is not true (Petitioner's brief, pp. 85-86) and passing the fact that the Bureau of Internal Revenue has held "the net income of Joint Stock Land Banks is subject to Federal Income Tax" (Petitioner's brief, p. 61), it should not be assumed, off the record, that Joint Stock Land Banks "have no taxable income and they pay no taxes." The record is silent in these respects because both the Government and the petitioner considered both considerations irrelevant. Incidentally, in the brief as *amicus curiae*, filed herein, it is alleged that the Mississippi Joint Stock Land Bank and the Tennessee Joint Stock Land Bank do have taxable income. *So far as the intent and letter of the interest deduction provisions are concerned, the essential factor is that Congress contemplated Joint Stock Land Banks as taxable units,—as has the Bureau of Internal Revenue.*

IV.

As held by this Court in *Denman* v. *Slayton*, decided February 24, 1931, and confirmed herein, the "manifest purpose" of the exception to the interest deduction provision "was to prevent the escape from taxation of income properly subject thereto by the purchase of exempt securities with borrowed money." *Clearly the indebtedness of a Joint Stock Land Bank incurred to create funds to loan to farmers, as contemplated by Congress in the Federal Farm Loan Act, is not within the "manifest purpose" of the exception clause.* Furthermore, the casual coincidence of interest received and deduction of interest paid does not per-force bring it within the exception clause (Petitioner's brief, pp. 16-19).

As to the letter of the interest deduction exception clause, Section 13 of the Farm Loan Act, referred to by the Court, empowering Federal Land Banks to invest their funds "in the *purchase* of qualified first mortgages on farm lands *situated within the Federal Land Bank District,*" is an exact description of Federal Land Bank's operations in that *they do "purchase" notes and mortgages from National Farm Loan Associations,* organized under Sections 7, 8, 9 and 11 of the Act (Petitioner's brief, pp. 46-47). *Joint Stock Land Banks, however, loan directly to farmers* and the word "purchase" in Section 13 (even in view of the language of Section 16 referred to by the Court) is no more applicable to a Joint Stock Land Bank's lending operations than is the reference to "the Federal Land Bank District" or numerous other limitations in the Act applicable solely to Federal Land Banks. Other considerations in respect of "purchase or carry," set forth in petitioner's brief, pp. 38-51, are, it is respectfully submitted, controlling to the contrary.

Again as to the letter of the interest deduction provision, considerations set forth in petitioner's brief, pp. 52-67, are, it is respectfully submitted, controlling to the effect that the farmers' first mortgage notes and mortgages do not fall within Section 213 (b) (4) (b) as "securities *issued* under the provisions of the Federal Farm Loan Act" and such considerations should prevail over any general reasoning that because the farmers' notes and mortgages are designed and acquired in contemplation of the Federal Farm Loan Act they are, therefore, "securities *issued* under the provisions of the Federal Farm Loan Act." *The same general reasoning would justify a conclusion that Liberty bonds are "securities issued under the provisions of the Federal Farm Loan Act"* because they, in common with the farmers' first mortgage notes and mortgages, may be used, interchangeably with farmers' first mortgage notes and mortgages, as collateral security for the issuance of Joint Stock Land Bank bonds.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the Court of Claims be, upon further consideration, reversed.

Respectfully submitted,

HAROLD V. AMBERG,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I, Harold V. Amberg, counsel for the above named petitioner, DO HEREBY CERTIFY that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

HAROLD V. AMBERG,
Counsel for Petitioner.